

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
2 STATE OF NEVADA, IN AND FOR THE COUNTY  
3 OF NYE.

4 - - - - -

5 IN THE MATTER OF THE DETERMINATION ) No. 4843  
6 OF THE RELATIVE RIGHTS IN AND TO ) FILED  
7 THE WATERS OF MANSE SPRINGS AND ITS ) NOV 14, 1939  
8 TRIBUTARIES IN NYE COUNTY, STATE ) Frank E. Bell County Clerk  
9 OF NEVADA. ) By G. Shoe Deputy

10  
11 DE C R E E.

12 The above entitled cause came on regularly to be heard  
13 on the 5th day of November, 1937, before the Court, the Honor-  
14 able Wm. D. Hatton sitting as Judge thereof, upon the Order of  
15 Determination by the State Engineer, a certified copy of which  
16 was filed herein on the 12th day of June, 1937, for a decree  
17 determining the rights in and to the waters of the Manse Springs  
18 and its tributaries in Nye County, Nevada; and Exceptions having  
19 been made to said Order of Determination by Eddie Barry and  
20 filed herein on July 23, 1937; and the said Order of Determina-  
21 tion having been initiated by a Petition of Merickel Holding  
22 Corporation and Harold D. Cornell filed with the State Engineer  
23 on the 16th day of April, 1937; and the State Engineer appearing  
24 by and through Gray Mashburn, Attorney General for the State of  
25 Nevada, W. T. Mathews, Deputy Attorney General, Alan Bible,  
26 Deputy Attorney General, and W. Howard Gray, Special Deputy  
27 Attorney General, and the Petitioners, Merickel Holding Corpora-  
28 tion and Harold D. Cornell, appearing by Frank McNamee, Jr., Esq.,  
29 and the Exceptor, Eddie Barry, appearing by William M. Kearney,  
30 Esq., and evidence both oral and documentary having been intro-

1       duced and the cause submitted for decision, the Court having  
2       heretofore made and caused to be filed herein its written  
3       Findings of Fact and Conclusions of Law, and being fully advised.

4               WHEREFORE, by reason of the law and the Findings of  
5       Fact aforesaid, it is

6               ORDERED, ADJUDGED AND DECREED

7               (1) That Merickel Holding Corporation and Harold D.  
8       Cornell, Petitioners herein, are the lawful successors in  
9       interest to Joseph Yount, who commenced placing the waters of  
10      the Manse Springs and its tributaries to beneficial use in or  
11      about the year 1877, and who was the owner of the vested rights  
12      to the use of all of said waters. That said vested rights ever  
13      since they have been in existence, have belonged to said Merickel  
14      Holding Corporation and Harold D. Cornell, or their predecessors  
15      in interest, and have at no time become forfeited or abandoned.

16              (2) That at the time of the commencement of the appro-  
17      priation of the said waters as in these findings mentioned and  
18      referred to, all of the said waters, which consist of six springs,  
19      arose and flowed within, and returned and sank into the ground  
20      within, the confines of the Manse or Yount Ranch, being the  
21      lands herein described, and which are the property of said  
22      Merickel Holding Corporation and Harold D. Cornell.

23              (3) That the irrigation season in this area be from  
24      January 1, to December 31, of each year.

25              (4) That the duty of said water be fixed at 7.23 acre  
26      feet per acre for the irrigation season of 365 days, being the  
27      equivalent of a continuous flow of 0.01 c.f.s. for each acre of  
28      land, or 1.0 cubic feet per second for each one hundred acres of  
29      land cultivated.

30              (5) That said Merickel Holding Corporation and Harold

1 D. Cornell be and they are hereby awarded all of the water rights  
 2 in and to the waters of the said Manse Springs and the tribu-  
 3 taries thereto.

4 (6) That the source of water supply, the location of  
 5 the point of diversion, the year of priority, the cultural  
 6 acreage, the legal subdivisions, sections, townships, and ranges,  
 7 and duty of water for claimants and appropriators, said Merickel  
 8 Holding Corporation and Harold D. Cornell, are as follows:

9  
 10 Claimant - Merickel Holding Corpora- Proof No. -02287 (Amended)  
tion & Harold D. Cornell.

11 Source - Manse Spring and Tributaries

12 Points of Diversion:

- 13 Manse Spring - In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 14 Manse Spring #2 - In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 15 Manse Spring #4 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 16 Manse Spring #5 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 17 Manse Spring #6 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 18 Manse Spring #7 - In the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.

Year of Priority	Culture Acres Harvest Crop	Subdiv.	Sec.	Tp. S.	R. E.	c.f.s Duty of Water
1877	4.7	SW $\frac{1}{4}$ NW $\frac{1}{4}$	3	21	54	0.047
1877	15.0	NE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.15
1877	2.9	SE $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.029
1877	10.0	Lot 2	4	21	54	0.10
1877	29.4	SW $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.294
1877	21.2	Lot 3	4	21	54	0.212
1877	6.1	Lot 4	4	21	54	0.061
1877	21.6	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.216
1877	29.1	SE $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.291
1891	1.6	SW $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.016
1891	10.0	Lot 2	4	21	54	0.10
1891	10.0	Lot 3	4	21	54	0.10
1891	5.0	Lot 4	4	21	54	0.05
1891	9.2	SE $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.092
1891	10.0	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.10
1891	18.2	NE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.182
1891	14.1	NW $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.141
1900	9.4	NW $\frac{1}{4}$ SW $\frac{1}{4}$	3	21	54	0.094
1900	1.2	SE $\frac{1}{4}$ NW $\frac{1}{4}$	3	21	54	0.012
1900	11.6	Lot 1	4	21	54	0.116
1900	13.3	SE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.133
1900	30.4	NE $\frac{1}{4}$ SW $\frac{1}{4}$	4	21	54	0.304
1900	16.6	NW $\frac{1}{4}$ SW $\frac{1}{4}$	4	21	54	0.166

Total 300.6 3.006

1                   (7) That the said Exceptor, Eddie Barry, has at no  
2 time, nor does he now have any rights in or to any of the waters  
3 of said Manse Springs or tributaries thereto.

4                   (8) That as provided for in said Order of Determina-  
5 tion, the waters herein adjudicated are to be measured at a  
6 point where the waters in the main ditches first become appur-  
7 tenant to the lands designated herein and in the event the water  
8 user named herein desires to change the place of use of any of  
9 the waters herein allocated to new lands, such water user must  
10 make application to the State Engineer for permission to make  
11 such change in the manner set forth under the provisions of the  
12 Water Code of the State of Nevada.

13                   (9) That the appropriator is hereby given the right  
14 to continue the diversion and use of waters from Manse Springs  
15 and tributaries at any time during the year, as heretofore used,  
16 and that the amount of water diverted for irrigation purposes  
17 shall not be increased by any amount to be used for stockwatering  
18 purposes, but the quantity allowed and diverted for irrigation  
19 purposes includes the water for stockwatering purposes.

20                   (10) That the costs of this proceeding are hereby  
21 assessed and adjudged against the proponents, Merickel Holding  
22 Corporation and Harold D. Cornell, they being the allottees  
23 under this decree of the entire flow of water from said Manse  
24 Spring and tributaries; and that the said Objector, Eddie Barry,  
25 have and recover from said proponents his costs herein in the  
26 sum of \$76.37; that the State Engineer of the State of Nevada  
27 have and recover from the said proponents his costs herein in  
28 the sum of \$57.53; that the Clerk of this Court have and re-  
29 cover from said proponents the sum of \$18.92; and the Court  
30 Reporter, Harriet Stingley, the sum of \$1.91; and the proponents

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are ordered and directed to pay said costs accordingly.

The Court retains jurisdiction with respect to costs.

DATED: November 14, 1939.

WM. D. HATTON  
District Judge.

Certificate of Clerk

State of Nevada, }  
COUNTY OF NYE } ss.

I, FRANK E. BELL, County Clerk of Nye County, State of Nevada, and Ex-Officio Clerk of the District Court of the Fifth Judicial District of the State of Nevada, in and for the county of Nye, do hereby certify the foregoing and annexed to be a true and correct copy of "DECREE". In the Matter of the Determination of the Relative Rights in and to the Waters of Manse Springs and its Tributaries in Nye County, State of Nevada, Case No. 4843-

as the same appears on file and of record in my office at Tonopah, County and State aforesaid.

Attest my hand and seal of said Court, this 10th  
day of November A. D. 19 43  
By Frank E. Bell Clerk  
E. V. Murphy Deputy

~~St. Engineer's Copy~~  
St. Engineer's Copy

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

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IN THE MATTER OF THE DETERMINATION  
OF THE RELATIVE RIGHTS IN AND TO  
THE WATERS OF MANSE SPRINGS AND ITS  
TRIBUTARIES IN NYE COUNTY, STATE OF  
NEVADA.

No. 4843

D E C R E E

The above entitled cause came on regularly to be heard on the 5th day of November, 1937, before the Court, the Honorable Wm. D. Hatton sitting as Judge thereof, upon the Order of Determination by the State Engineer, a certified copy of which was filed herein on the 18th day of June, 1937, for a decree determining the rights in and to the waters of the Manse Springs and its tributaries in Nye County, Nevada; and Exceptions having been made to said Order of Determination by Eddie Barry and filed herein on July 23, 1937; and the said Order of Determination having been initiated by a Petition of Merickel Holding Corporation and Harold D. Cornell filed with the State Engineer on the 16th day of April, 1937; and the State Engineer appearing by and through Gray Mashburn, Attorney General for the State of Nevada, W. T. Mathews, Deputy Attorney General, Alan Bible, Deputy Attorney General, and W. Howard Gray, Special Deputy Attorney General, and the Petitioners, Merickel Holding Corporation and Harold D. Cornell, appearing by Frank McNamee, Jr., Esq., and the Exceptor,

1 Eddie Barry, appearing by William M. Kearney, Esq., and evidence  
2 both oral and documentary having been introduced and the cause  
3 submitted for decision, the Court having heretofore made and  
4 caused to be filed herein its written Findings of Fact and Con-  
5 clusions of Law, and being fully advised

6 WHEREFORE, by reason of the law and the Findings of  
7 Fact aforesaid, it is

8 ORDERED, ADJUDGED AND DECREED

9 (1) That Merickel Holding Corporation and Harold D.  
10 Cornell, Petitioners herein, are the lawful successors in interest  
11 to Joseph Yount, who commenced placing the waters of the Manse  
12 Springs and its tributaries to beneficial use in or about the  
13 year 1877, and who was the owner of the vested rights to the use  
14 of all of said waters. That said vested rights ever since they  
15 have been in existence, have belonged to said Merickel Holding  
16 Corporation and Harold D. Cornell, or their predecessors in in-  
17 terest, and have at no time become forfeited or abandoned.

18 (2) That all of said waters, which consist of six springs,  
19 arise and flow within the confines of the Manse Ranch owned by  
20 said Merickel Holding Corporation and Harold D. Cornell.

21 (3) That the irrigation season in this area be from  
22 January 1, to December 31, of each year.

23 (4) That the duty of said water be fixed at 7.23 acre  
24 feet per acre for the irrigation season of 365 days, being the  
25 equivalent of a continuous flow of 0.01 c.f.s. for each acre  
26 of land, or 1.0 cubic feet per second for each one hundred acres  
27 of land cultivated.  
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1 (5) That said Merickel Holding Corporation and Harold  
 2 D. Cornell be and they are hereby awarded all of the water rights  
 3 in and to the waters of the said Manse Springs and the tributaries  
 4 thereto.

5 (6) That the said waters of Manse Spring and tributaries  
 6 thereto be closed to subsequent appropriation of water for irri-  
 7 gation purposes.

8 (7) That the source of water supply, the location of  
 9 the point of diversion, the year of priority, the cultural acre-  
 10 age, the legal subdivisions, sections, townships, and ranges, and  
 11 duty of water for claimants and appropriators, said Merickel  
 12 Holding Corporation and Harold D. Cornell, are as follows:  
 13

14  
 15 Claimant - Merickel Holding Corpora- Proof No. - 02287 (Amended)  
 16 tion & Harold D. Cornell.

17 Source - Manse Spring and Tributaries

18 Points of Diversion:

19 Manse Spring - In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 20 Manse Spring #2 - In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 21 Manse Spring #4 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 22 Manse Spring #5 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 23 Manse Spring #6 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 24 Manse Spring #7 - In the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.

Year of Priority	Culture Acres Harvest Crop	Subdiv.	Sec.	Tp. S.	R. E.	c.f.s. Duty of Water
1877	4.7	SW $\frac{1}{4}$ NW $\frac{1}{4}$	3	21	54	0.047
1877	15.0	NE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.15
1877	2.9	SE $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.029
1877	10.0	Lot 2	4	21	54	0.10
1877	29.4	SW $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.294
1877	21.2	Lot 3	4	21	54	0.212
1877	6.1	Lot 4	4	21	54	0.061
1877	21.6	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.216
1877	29.1	SE $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.291
1891	1.6	SW $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.016
1891	10.0	Lot 2	4	21	54	0.10
1891	10.0	Lot 3	4	21	54	0.10
1891	5.0	Lot 4	4	21	54	0.05
1891	9.2	SE $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.092
1891	10.0	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.10

1	1901	18.2	NE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.182
	1891	14.1	NW $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.141
2	1900	9.4	NW $\frac{1}{4}$ SW $\frac{1}{4}$	3	21	54	0.094
	1900	1.2	SE $\frac{1}{4}$ NW $\frac{1}{4}$	3	21	54	0.012
3	1900	11.6	Lot 1	4	21	54	0.116
	1900	13.3	SE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.133
4	1900	30.4	NE $\frac{1}{4}$ SW $\frac{1}{4}$	4	21	34	0.304
	1900	<u>18.6</u>	NW $\frac{1}{4}$ SW $\frac{1}{4}$	4	21	54	<u>0.186</u>
5							
6	Total	300.8					3.006

7 (8) That the said Exceptor, Eddie Barry, has at no  
8 time, nor does he now have any rights in or to any of the waters  
9 of said Manse Springs or tributaries thereto.

10 (9) That as provided for in said Order of Determination,  
11 the waters herein adjudicated are to be measured at a point  
12 where the waters in the main ditches first become appurtenant  
13 to the lands designated herein and in the event the water user  
14 named herein desires to change the place of use of any of the  
15 waters herein allocated to new lands, such water user must make  
16 application to the State Engineer for permission to make such  
17 change in the manner set forth under the provisions of the Water  
18 Code of the State of Nevada.

19 (10) That the appropriator is hereby given the right to  
20 continue the diversion and use of waters from Manse Springs and  
21 tributaries at any time during the year, as heretofore used, and  
22 that the amount of water diverted for irrigation purposes shall  
23 not be increased by any amount to be used for stockwatering pur-  
24 poses, but the quantity allowed and diverted for irrigation pur-  
25 poses includes the water for stockwatering purposes.

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27 DATED Nov. 14, 1939.

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29 Wm. P. Hutton  
30 District Judge.  
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE  
IN THE MATTER OF THE DETERMINATION ) No. 4843  
OF THE RELATIVE RIGHTS IN AND TO ( FILED  
THE WATERS OF MANSE SPRINGS AND ITS ) NOV 14, 1939  
TRIBUTARIES IN NYE COUNTY, STATE ( Frank E. Bell County Clerk  
OF NEVADA. ) By G. Shae Deputy

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause having come on regularly to be heard on the 5th day of November, 1937, upon the Order of Determination by the State Engineer, a certified copy of which was filed herein on the 12th day of June, 1937, for a decree determining the rights in and to the waters of the Manse Springs and its tributaries in Nye County, Nevada, before the Honorable Wm. D. Hatton, District Judge; and Exceptions having been made to said Order of Determination by Eddie Barry and filed herein on July 23, 1937; and the said Order of Determination having been initiated by a Petition of Merickel Holding Corporation and Harold D. Cornell filed with the State Engineer on the 16th day of April, 1937; and the State Engineer appearing by and through Gray Mashburn, Attorney General for the State of Nevada, W. T. Mathews, Deputy Attorney General, Alan Bible, Deputy Attorney General, and W. Howard Gray, Special Deputy Attorney General; and the Petitioners, Merickel Holding Corporation and Harold D. Cornell appearing by Frank McNamee, Jr., Esq., and the Exceptor, Eddie Barry, appearing by William M. Kearney, Esq., and evidence both oral and documentary having been introduced, and after hearing all of

1 the evidence offered by the parties and the argument of counsel,  
2 the matter was on the 9th day of January, 1939, submitted to  
3 the Court for decision, and the Court now makes its Findings of  
4 Fact and Conclusions of Law, as follows:

5 FINDINGS OF FACT.

6 I.

7 That it is true that the State Engineer of the State of  
8 Nevada, having received a petition dated April 14th, 1937, from  
9 Merickel Holding Corporation and Harold D. Cornell requesting  
10 that a determination be made of the relative rights in and to the  
11 waters of Manse Spring and tributaries, and the State Engineer,  
12 under and pursuant to Section 18, Chapter 140, Statutes of Nevada,  
13 1913, and acts amendatory and supplementary thereto, having made  
14 an investigation on May 6th, 1937, and finding that the facts  
15 and conditions justified a determination, entered an order grant-  
16 ing the petition on May 18th, 1937.

17 II.

18 That it is true that the State Engineer, having received,  
19 filed in his records and abstracted, proof, map and statement of  
20 claim to the use of water from said stream system required under  
21 the provisions of said Chapter 140, Statutes of 1913; and all the  
22 claimants or appropriators, being less than ten in number, having  
23 waived, in writing, the provisions of said Chapter 140, Statutes  
24 of 1913, and acts amendatory and supplemental thereto, with  
25 reference to notices and service and publication thereof, and pro-  
26 ceeded pursuant to 1921 Statutes of Nevada, Chapter 106, Sec. 36B.

27 III.

28 That it is true that the State Engineer, in accordance  
29 with said Section 36B, Chapter 106, Statutes of 1921, made and  
30 filed and caused to be entered of record in his office, an Order

1 of Determination defining the rights of the claimants to the  
2 waters of Manse Spring and tributaries, a certified copy of  
3 which is on file herein.

4 IV.

5 That it is true that on May 6th, 1937, the entire flow  
6 of water from Manse Spring and tributaries was being placed to  
7 beneficial use by Merickel Holding Corporation and Harold D.  
8 Cornell, who are the successors in interest to Joseph Yount, who  
9 commenced placing the water to beneficial use in about the year  
10 1877, subsequently increasing such use as shown in paragraph IX  
11 of these findings; the vested rights of such claimants being  
12 evidenced by Amended Proof of Appropriation Serial Number 02287  
13 and supporting map; and that Eddie Barry is a claimant to the  
14 waters of Manse Spring and tributaries by virtue of application  
15 No. 9915, filed December 9th, 1935, to appropriate 5.0 cubic  
16 feet per second of said waters for irrigation and domestic pur-  
17 poses on parts of Section 5, Township 21 S. Range 54 E.; that  
18 the land to be irrigated under said application is adjacent to  
19 the old Yount Ranch; and that no action has been taken by the  
20 State Engineer on said application.

21 V.

22 That it is true that the waters of the six springs  
23 which all arise within the confines of claimants', Merickel  
24 Holding Corporation and Harold D. Cornell, premises, are and  
25 shall be known as Manse Spring and tributaries.

26 VI.

27 That it is true that in this area as well as other lo-  
28 calities in Southern Nevada, irrigation is beneficially carried  
29 on throughout the year, and that the State Engineer in said  
30 Order of Determination fixed the irrigation season herein as

1 being from January 1 to December 31 of each year.

2 VII.

3 That it is true that the duty of water is the amount of  
4 water in acre feet required to be placed on land in a manner con-  
5 sistent with good irrigation practice to yield adequate crop re-  
6 turns. The only method of arriving at the duty of water on a  
7 given tract of land growing a certain crop is by actually measur-  
8 ing the amount of water over a period of years delivered at the  
9 margin of the tract and applied to the land in quantities con-  
10 sistent with the requirements of plant growth under good irriga-  
11 tion practice; that in this instance practically the entire flow  
12 of water was used to irrigate about three hundred acres of land  
13 of the said premises of said claimants for a period of more than  
14 fifty years, and that the duty of said water has by practice been  
15 well established; that the amount of water flowing from these  
16 springs over a number of years has been proven to be practically  
17 constant, varying between about 3.1 c.f.s. and 3.23 c.f.s.  
18 Considering the amount of water that reaches the lands as being  
19 about 3.0 cubic feet per second and considering three hundred  
20 acres as being the amount of land irrigated, it would mean that  
21 the amount of water in continuous flow actually used to irrigate  
22 said lands has been at the rate of 1.0 cubic feet per second for  
23 each one hundred acres of land irrigated.

24 VIII.

25 That it is true that the waters involved are fully appro-  
26 priated by the present claimants and appropriators, Merickel  
27 Holding Corporation and Harold D. Cornell, and that Merickel  
28 Holding Corporation and Harold D. Cornell are the lawful succes-  
29 sors in interest to the vested rights to the use of the waters of  
30 Manse Spring and tributaries.

IX.

That it is true that the source of water supply, the location of the point of diversion, the year of priority, the cultural acreage, the legal subdivisions, sections, townships and ranges and duty of water for claimants and appropriators are set forth as follows:

Claimant - Merickel Holding Corporation & Harold D. Cornell, Proof No.-02287 (Amended)

Source - Manse Spring & Tributaries

Points of Diversion:

Manse Spring - In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R.54 E., M.D.M.  
 Manse Spring #2 In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R.54 E., M.D.M.  
 Manse Spring #4 In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R.54 E., M.D.M.  
 Manse Spring #5 In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R.54 E., M.D.M.  
 Manse Spring #6 In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R.54 E., M.D.M.  
 Manse Spring #7 In the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 3, T. 21 S., R.54 E., M.D.M.

Year of Priority	Culture Acres Harvest Crop	Subdiv.	Sec.	Tp S	R E	Duty of Water c.f.s.
1877	4.7	SW $\frac{1}{4}$ NW $\frac{1}{4}$	3	21	54	0.047
1877	15.0	NE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.15
1877	2.9	SE $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.029
1877	10.0	Lot 2	4	21	54	0.10
1877	29.4	SW $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.294
1877	21.2	Lot 3	4	21	54	0.212
1877	6.1	Lot 4	4	21	54	0.061
1877	21.6	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.216
1877	29.1	SE $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.291
1891	1.6	SW $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.016
1891	10.0	Lot 2	4	21	54	0.10
1891	10.0	Lot 3	4	21	54	0.10
1891	5.0	Lot 4	4	21	54	0.05
1891	9.2	SE $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.092
1891	10.0	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.10
1891	18.2	NE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.182
1891	14.1	NW $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.141
1900	9.4	NW $\frac{1}{4}$ SW $\frac{1}{4}$	3	21	54	0.094
1900	1.2	SE $\frac{1}{4}$ NW $\frac{1}{4}$	3	21	54	0.012
1900	11.6	Lot 1	4	21	54	0.116
1900	13.3	SE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.133
1900	30.4	NE $\frac{1}{4}$ SW $\frac{1}{4}$	4	21	54	0.304
1900	16.6	NW $\frac{1}{4}$ SW $\frac{1}{4}$	4	21	54	0.166
<b>Total</b>	<b>300.6</b>					<b>3.008</b>

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X.

That the said Order of Determination is complete and that it does fix the duty of water in the manner specified by the Statute in such cases made and provided, and in conformity with the laws of the State of Nevada.

XI.

That the State Engineer had jurisdiction and power under the laws of the State of Nevada to make and enter the Order of Determination in the form and manner in which the same has been entered, and that all prerequisites thereto were and have been complied with.

XII.

That it is true that a beneficial use of said water requires an irrigation season from January 1 to December 31, of each year.

XIII.

That the Order of Determination awarding all of the water of the source to Merickel Holding Corporation and Harold D. Cornell is supported by the evidence, and that it is not true that said waters, or any part thereof, were abandoned by Merickel Holding Corporation, Harold D. Cornell, or by their predecessors in interest, or either or any of them. That the evidence shows that, in the year 1877 Joseph Yount began the use of Manse Springs and tributaries by the diversion and application of water therefrom to beneficial use, for irrigation and domestic purposes, which use was increased from year to year, and that not later than the year 1910, there was as much as 300 acres of land under cultivation and irrigated, by the said Joseph Yount, from the waters of said Manse Spring and tributaries; that from June 15, 1929, until September 11, 1936, no water from the said springs

1 was used for the irrigation or cultivation of land, excepting  
2 that during the entire period last mentioned, the orchard and  
3 vineyard, comprising a few acres, were irrigated from Manse  
4 Spring No. 2, and during the said period, the water from said  
5 springs formed a swampy area on which a few head of live-stock  
6 pastured. That beginning September 11, 1936, the petitioners  
7 turned a portion of the water onto a portion of the land to  
8 soften it for plowing, and that from that time forward, the  
9 beneficial use of the <sup>said</sup> water was increased, with due dili-  
10 gence, until cultivation and use was resumed on approximately  
11 300 acres of land, thereby placing to beneficial use all of the  
12 waters of the said Manse Spring and tributaries. That at no  
13 time did the petitioners, or any of their predecessors in interest,  
14 abandon or intend to abandon their rights, or any of them, in  
15 and to any of the waters of the said Manse springs or their tri-  
16 butaries, in Nye County, Nevada.

17 XIV.

18 That the Order of Determination is correct in that it  
19 does not award the waters to claimant, Eddie Barry, inasmuch as all  
20 the rights in the waters belong to petitioners and were not aban-  
21 doned by them or their predecessors in interest at the time of or  
22 for five years prior to the filing of Application No. 9915 by  
23 said Eddie Barry.

24 XV.

25 It is true that when the appropriation of the said  
26 waters by Joseph Yount began, in the year 1877, the waters from  
27 the said springs formed a marshy swamp, or bog-land, where all  
28 the water sank, none of the said waters running in any defined  
29 or noticeable stream or channel, and all of the water rising and  
30 sinking on the land of the said Joseph Yount; that the predecessors

1 in interest of the petitioners herein excavated in and about the  
2 said Manse Spring, making a basin, or reservoir, approximately  
3 six feet deep, forty feet wide and sixty feet long, and ran  
4 therefrom one or more canals, or ditches, by which the water  
5 was conveyed onto the land for irrigation; that by reason of  
6 such excavation and channel or channels the water, when not in  
7 use, sank into the ground at a greater distance from the springs  
8 than at the time of the commencement of development of the  
9 springs, and that during the period of non-use, from 1929 to 1936  
10 above referred to, the water ran approximately 200 yards in a  
11 natural channel and then formed a marsh; and that during said  
12 period, a portion of the water found its way off of the said  
13 land of the petitioners and their predecessors.

14  
15 CONCLUSIONS OF LAW

16 And based upon the foregoing Findings of Fact, the  
17 Court concludes as a matter of law:

18 I.

19 That the petitioners, Merickel Holding Corporation  
20 and Harold D. Cornell, are entitled to a Decree of this Court  
21 awarding to them all of the water rights in and to the Manse  
22 Springs and its tributaries, in Nye County, Nevada.

23 II.

24 That the Exceptor, Eddie Barry, has no rights in or  
25 to said waters.

26 III.

27 That the Court has jurisdiction to entertain this  
28 proceeding and to make and enter a decree herein.

29 IV.

30 That the irrigation season herein be fixed as being

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from January 1 to December 31 of each year.

V.

That the duty of said water be fixed in the amount of 7.23 acre feet per acre, for the irrigation season of 365 days, which is the equivalent of a continuous flow of 0.01 c.f.s. for each acre of land.

Let a Decree be entered accordingly.

DATED this 19<sup>th</sup> day of October, 1939.

WM. D. HATTON  
District Judge.

**Certificate of Clerk**

State of Nevada, }  
COUNTY OF NYE } ss.

I, FRANK E. BELL, County Clerk of Nye County, State of Nevada, and Ex-Officio Clerk of the District Court of the Fifth Judicial District of the State of Nevada, in and for the county of Nye, do hereby certify the foregoing and annexed to be a true and correct copy of "Findings of Fact and Conclusions of Law" In the Matter of the Determination of the Relative Rights in and to the Water of Manse Springs and its Tributaries in Nye County, State of Nevada, Case No. 4843.

as the same appears on file and of record in my office at Tonopah, County and State aforesaid.

Attest my hand and seal of said Court, this 10th day of November A. D. 19 43  
Frank E. Bell Clerk  
By [Signature] Deputy

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IN THE OFFICE OF THE STATE ENGINEER OF THE  
In the Matter of the Determination of the  
**STATE OF NEVADA**  
Relative Rights in and to the Waters of  
Mense Spring and Tributaries, ~~in~~ Nye County,  
Nevada.

**In the Matter of the Determination of the Relative Rights in and to the Waters of Mense Spring and Tributaries, in Nye County, Nevada.**

The State Engineer, Nevada, having received a petition dated April 14th, 1937, from Merlekal Holding Corporation and Harold D. Cornell requesting that a determination be made of the relative rights in and to the waters of Mense Spring and tributaries, and the State Engineer, under and pursuant to Section 19, Chapter 140, Statutes of Nevada 1913, and acts amendatory and supplementary thereto, having made an investigation on May 5th, 1937, and finding that the facts and conditions justified a determination in accordance with the provisions of Chapter 140, Statutes of Nevada 1913, as subsequently amended.

**ORDER OF DETERMINATION**

compiled in the Office of the State Engineer in Accordance with the Provisions of Chapter 140, Statutes of 1913, as subsequently amended.

The State Engineer, having received, filed in his records and abstracted, proof, map and statement of claim to the

**ALFRED MERRITT SMITH, State Engineer**

**Carson City, Nevada**

1937

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

ooo0ooo

Now, therefore, in accordance with the provisions of  
In the Matter of the Determination of the )  
Section 36B, Chapter 140, Statutes of 1921, the State Engineer )  
Relative Rights in and to the Waters of )  
hereby makes and files and causes to be entered of record in )  
Manse Spring and Tributaries, in Nye County, )  
his Office this Order of Determination, defining the rights of )  
Nevada. )  
the claimants to the waters of Manse Spring and Tributaries.

ORDER OF DETERMINATION

The State Engineer of the State of Nevada, having fact  
received an petition dated April 14th, 1937, from Merickel Hold-  
ing Corporation and Harold D. Cornell requesting that a determina-  
tion be made of the relative rights in and to the waters of Manse  
Spring and tributaries, and the State Engineer, under and pursuant  
to Section 18, Chapter 140, Statutes of Nevada 1913, and acts  
amendatory and supplementary thereto, having made an investiga-  
tion on May 6th, 1937, and finding that the facts and conditions  
justified a determination, entered an order granting the petition  
on May 18th, 1937. virtue of Application No. 9915, filed on Decem-  
ber 9th, 1936. The State Engineer, having received, filed in his  
records and abstracted, proof, map and statement of claim to the  
use of water from said stream system required under the pro-  
visions of said Chapter 140, Statutes of 1913; and all the  
claimants or appropriators, being less than ten in number, hav-  
ing waived, in writing, the provisions of said Chapter 140,  
Statutes of 1913, and acts amendatory and supplemental thereto,

with reference to notices and the service and publication thereof.

Now, therefore, in accordance with the provisions of Section 36B, Chapter 106, Statutes of 1921, the State Engineer hereby makes and files and causes to be entered of record in his Office this Order of Determination, defining the rights of the claimants to the waters of Manse Spring and Tributaries.

#### CLAIMANTS

The investigation above referred to disclosed the fact that the entire flow of water from Manse Spring and tributaries is at present being placed to beneficial use by Merickel Holding Corporation and Harold D. Cornell, who are the successors in interest to Joseph Yount, who commenced placing the water to beneficial use in about the Year 1877. The vested rights of said claimants are evidenced by Amended Proof of Appropriation Serial Number 02287 and supporting map.

Eddie Barry is a claimant to the waters of Manse Spring and tributaries by virtue of Application No. 9915, filed on December 9th, 1935, to appropriate 5.0 cubic feet per second of said waters for irrigation and domestic purposes on parts of Section 5, Township 21 S., Range 54 E. The land to be irrigated under said application is adjacent to the old Yount Ranch on which said waters of Manse Spring are now being placed to beneficial use by Merickel Holding Corporation and Harold D. Cornell. No action has been taken by the State Engineer on this application.

### SPRINGS

The waters of the six springs, all arising within the confines of Claimants' Merickel Holding Corporation and Harold D. Cornell premises, shall all be known as Manse Spring and Tributaries.

### IRRIGATION SEASON

In this area as well as other localities in Southern Nevada irrigation is beneficially carried on throughout the year. The irrigation season is therefore herein fixed as being from January 1st to December 31st of each year.

### DUTY OF WATER

The duty of water is the amount of water in acre feet required to be placed on land in a manner consistent with good irrigation practice to yield adequate crop returns. The only method of arriving at the duty of water on a given tract of land growing a certain crop is by actually measuring the amount of water over a period of years delivered at the margin of the tract and applied to the land in quantities consistent with the requirements of plant growth under good irrigation practice.

In this instance, however, we have evidence to support the fact that practically the entire flow of water from Manse Spring and tributaries was used to irrigate about three hundred acres of land on the ranch for a period of more than fifty years. It seems, therefore, that the duty of water has by practice been rather well established. The amount of water flowing from

these springs over a number of years has been proven to be practically constant, varying between about 3.1 c.f.s. and 3.23 c.f.s. Considering the amount of water that reaches the lands as being about 3.0 cubic feet per second and considering three hundred acres as being the amount of land irrigated, it would mean that the amount of water in continuous flow actually used to irrigate said lands has been at the rate of 1.0 cubic foot per second for each one hundred acres of land irrigated.

The duty of water is therefore herein fixed in the amount of 7.23 acre feet per acre for the irrigation season of 365 days, which is the equivalent of a continuous flow of 0.01 c.f.s. for each acre of land.

#### EXTENT OF APPROPRIATION

The extensive investigation of the use of water from Manse Spring and tributaries has conclusively proven to the satisfaction of the State Engineer that the waters involved are fully appropriated by the present claimant and appropriator, Merickel Holding Corporation and Harold D. Cornell, and it is recommended that as long as the magnitude and extent of the use of water under the present appropriation by said Merickel Holding Corporation and Harold D. Cornell remains substantially the same, the waters of Manse Spring and tributaries be closed to subsequent appropriation of water for irrigation purposes.

The State Engineer having found from the records in this proceeding that the Merickel Holding Corporation and Harold

D. Cornell are the lawful successors in interest to the vested rights to the use of the waters of Manse Spring and tributaries, hereby determines the source of water supply, the location of the point of diversion, the year of priority, the cultural acreage, the legal subdivisions, sections, townships and ranges and duty of water for claimants and appropriators as set forth in the following tabulation.

Claimant - Merickel Holding Corpora-  
tion & Harold D. Cornell.

Proof No. - 02287 (Amended)

Source - Manse Spring and Tributaries

Points of Diversion:

Manse Spring - In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 Manse Spring #2 - In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 Manse Spring #4 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 Manse Spring #5 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 Manse Spring #6 - In the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.  
 Manse Spring #7 - In the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 3, T. 21 S., R. 54 E., M.D.M.

Year of Priority	Culture Acres Harvest Crop	Subdiv.	Sec.	Tp. S.	R. E.	Duty of Water c.f.s.
1877	4.7	SW $\frac{1}{4}$ NW $\frac{1}{4}$	3	21	54	0.047
1877	15.0	NE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.15
1877	2.9	SE $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.029
1877	10.0	Lot 2	4	21	54	0.10
1877	29.4	SW $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.294
1877	21.2	Lot 3	4	21	54	0.212
1877	6.1	Lot 4	4	21	54	0.061
1877	21.6	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.216
1877	29.1	SE $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.291
1891	1.6	SW $\frac{1}{4}$ NE $\frac{1}{4}$	4	21	54	0.016
1891	10.0	Lot 2	4	21	54	0.10
1891	10.0	Lot 3	4	21	54	0.10
1891	5.0	Lot 4	4	21	54	0.05
1891	9.2	SE $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.092
1891	10.0	SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	21	54	0.10
1891	18.2	NE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.182
1891	14.1	NW $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.141
1900	9.4	NW $\frac{1}{4}$ SW $\frac{1}{4}$	3	21	54	0.094
1900	1.2	SE $\frac{1}{4}$ NW $\frac{1}{4}$	3	21	54	0.012
1900	11.6	Lot 1	4	21	54	0.116
1900	13.3	SE $\frac{1}{4}$ SE $\frac{1}{4}$	4	21	54	0.133
1900	30.4	NE $\frac{1}{4}$ SW $\frac{1}{4}$	4	21	54	0.304
1900	16.6	NW $\frac{1}{4}$ SW $\frac{1}{4}$	4	21	54	0.166
Total	300.6					3.006

### MEASUREMENT OF WATER

All water diverted from Manse Spring and tributaries for irrigation purposes, in accordance with this Order shall be measured at a point where the water in the main ditches first becomes appurtenant to the land to be irrigated or\* as near thereto as practical.

### CHANGE OF PLACE OF USE

All waters allocated under this Order shall be appurtenant to the lands designated herein. In the event the water user under this Order desires to change the place of use of any of the waters herein allocated to new lands, such water user must make application to the State Engineer for permission to make such change in the manner set forth under the Water Law of this State.

### STOCK AND DOMESTIC RIGHTS

The right to the diversion and use of water from Manse Spring and tributaries shall be continued by the appropriators named herein at any time during the year, as heretofore used. However, the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stockwatering purposes, but the quantity allowed and diverted for irrigation purposes includes the water for stockwatering purposes.

### JUNIOR RIGHTS

No person or persons holding a right of appropriation

not herein listed shall be entitled to receive any water from Manse Spring and its tributaries until all appropriations herein listed have been fully satisfied.

This Order of Determination made and filed in the Office of the State Engineer on the 8th day of June, 1937.

ALFRED MERRITT SMITH  
State Engineer

By: H. W. Reppert  
H. W. Reppert  
Assistant State Engineer